

**MINUTES FOR THE COURT OF APPEAL  
STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT**

**August 17, 2004**

DIVISION ONE

Court convened at 9:00 a.m.

Present: Ortega, Acting P.J., Vogel, J., Mallano, J. and S. Beaux, Deputy Clerk.

Each of the following:

B166308 People v. Williams, Shawn  
B166603 People v. Todorov  
B167794 Hass v. Rosenthal, M.D., et al.  
B168116 People v. Larry C.  
B168271 People v. Losee  
B168452 Allan v. Allan  
B169231 People v. Bushnell  
B169500 People v. Sanchez  
B169835 People v. Payne  
B170742 People v. Nungaray  
B170942 People v. Nolasco  
B171063 People v. Mazurak  
B171228 People v. Reed  
B171906 DCFS v. Harland F.  
B172636 Burgee v. Burgee  
B172910 DCFS v. Jamie S.  
B173740 DCFS v. Maureen D.  
B175543 April G. v. SCLA (DCFS, rpi)

Argument waived, cause submitted.

Justice Vogel leaves the bench.

DIVISION ONE (Continued)

B165196     People  
              v.  
              Williams

Merits:

Argued by Fay Arfa for appellant and by Alan Tate, Deputy Attorney General, for respondent. Counsel waives the presence of Spencer, P.J. Cause submitted.

Justice Vogel returns to the bench.

B172237     Boehlert  
              v.  
              City of Glendale

Merits:

Argued by Michael P. Calof for appellant and Ann M. Maurer, Deputy City Attorney, appeared for respondent and waived argument. Counsel waived the presence of Spencer, P.J. Cause submitted.

B170677     People  
              v.  
              Davion H.

Merits:

Argued by Lynette Moore for appellant and by Richard T. Breen, Deputy Attorney General, for respondent. Counsel waived the presence of Spencer, P.J. Cause submitted.

B158369     People  
              v.  
              Ortiz & Ruiz

Merits:

Argued by Susan L. Frierson, Deputy Attorney General, for respondent. Counsel for appellants previously waived argument. Submission deferred.

DIVISION ONE (Continued)

B169518     Ayers  
              v.  
              City of Los Angeles et al.

Merits:  
Argued by Diane Marchant for appellant and by Kim Rodgers Westhoff,  
Deputy City Attorney, for respondents. Cause submitted.

Mallano, J. leaves the bench.

B167128     People v. Smith  
B167128     In re Smith on Habeas Corpus

Merits:  
Argued by Vanessa Place for appellant and by Michael R. Jonsen, Deputy  
Attorney General, for respondent. Counsel waived the presence of Spencer,  
P.J.. Cause submitted.

Mallano, J. returns to the bench.

B169313     People  
              v.  
              Johnson

Merits:  
Argued by Richard L. Schwartzberg for appellant and by Chung L. Mar,  
Deputy Attorney General, for respondent. Counsel waived the presence of  
Spencer, P.J.. Cause submitted.

Vogel, J. leaves the bench.

DIVISION ONE (Continued)

B165947      Kabbe  
                 v.  
                 Kabbe

Merits:

Argued by Rose Kabbe, appellant in propria persona, and no appearance for respondent. Appellant waived the appearance of Spencer, P.J.. Cause submitted.

B168827      Clancy v. AT&T, Inc. et al.  
B171529      Clancy v. Comcast Corp. et al.

Merits:

Argued by James J. Clancy, appellant in propria persona and by Mark S. Hoffman for respondent Comcast Corp. Appellant waived the presence of Spencer, P.J.. Cause submitted.

Vogel, J. returns to the bench.

Mallano, J. leaves the bench.

B159513      Coe  
                 v.  
                 City of Los Angeles et al.

Merits:

Argued by Burton Mark Senk for appellant, by Katherine J. Hamilton, Deputy City Attorney, for respondent City of L.A. and by Peter P. Castillo for respondent CDSS et al. Counsel waived the presence of Spencer, P.J. Cause submitted.

Mallano, J. returns to the bench.

Vogel, J. leaves the bench.

August 17, 2004 (Continued)

## DIVISION ONE (Continued)

B172404 Melchior  
v.  
New Line Productions, Inc.

Merits:  
Argued by James J. Regan for appellant and by Saul D. Brenner for respondent. Counsel waived the presence of Spencer, P.J.. Cause submitted.

Court adjourned.

B170333      People  
v.  
Frank Boyd Cockrell

Filed order granting petition for rehearing. The petition for rehearing is granted only with regard to the Blakely issue.

DIVISION TWO

B164534 People (Not for Publication)  
v.  
Jimenez

The judgment is affirmed.

Nott, J.

We concur: Boren, P.J.  
Ashmann-Gerst, J.

August 17, 2004 (Continued)

DIVISION THREE

B170128     Laurel A. Rosenberg                    (Not for Publication)

v.

Fred Sherman and Alex Vasilevsky

The judgment is affirmed. Respondent(s) to recover costs.

Kitching, J.

We concur:    Croskey, Acting P.J.  
                 Aldrich, J.

B167554     People

v.

Damon Randall Burns

Filed order denying petition for rehearing.

DIVISION FOUR

B174041     Venus R.    (Not for Publication)

v.

Superior Court, Los Angeles County  
(Los Angeles County Department of Children and Family  
Services, r.p.i.)

The petition is denied.

Epstein, Acting P.J.

We concur:    Hastings, J.  
                 Curry, J.

August 17, 2004 (Continued)

## DIVISION FOUR (Continued)

B169071 People v. Duenas (Not for Publication)

The judgment is affirmed.

Epstein, Acting P.J.

We concur: Hastings, J.  
Curry, J.

B144789      Greene  
v.  
Century National Insurance Company et al.

Filed order denying petition for rehearing.

## DIVISION FIVE

B159310      Janis Adams      (Not for Publication)  
v.  
Los Angeles Unified School District

The order granting the new trial motion is affirmed solely for the reasons express in this opinion. The order denying the judgment notwithstanding the verdict motion is affirmed. Plaintiff, Janis Adams, is to recover her costs on appeal from defendant, Los Angeles Unified School District.

Turner, P.J.

We concur: Grignon, J.  
Armstrong, J.

DIVISION FIVE (Continued)

B170016      Hrayr Shahinian                      (Not for Publication)  
                 v.  
                 Martin Weiss

The judgment is affirmed. Respondent(s) to recover costs.

Turner, P.J.

I concur:      Armstrong, J.  
I concur:      Mosk, J.(opinion)

B170971      People                                      (Not for Publication)  
                 v.  
                 Marciano Rivera

The court's order "converting" appellant's restitution order to a civil judgment is vacated. The victim retains his right to enforce the restitution order as if it were a civil judgment.

Armstrong, J.

We concur:      Grignon, Acting P.J.  
                 Mosk, J.

B171293      People                                      (Not for Publication)  
                 v.  
                 Phillip Brimmer

The judgment is affirmed.

Armstrong, J.

We concur:      Turner, P.J.  
                 Grignon, J.



August 17, 2004 (Continued)

## DIVISION FIVE (Continued)

B166764      Lyle R. Mink      (Certified for Partial for Publication)  
v.  
Dan S. Maccabee

The judgment notwithstanding the verdict on the complaint is affirmed. The dismissal of the cross-complaint is reversed. The parties are to bear their own costs on appeal.

Armstrong, J.

We concur: Turner, P.J.  
Mosk, J.

B171586      Stephen B. Simon  
v.  
Barbara Simon

Filed order dismissing appeal after issuance of Order to Show Cause.

B174712 Michele Fraser  
v.  
H. Baco et al.

Filed order granting motion to dismiss appeal. Appeal (notice of appeal filed April 13, 2004) dismissed.

DIVISION SIX

B172489 People (Not for Publication)  
v.  
Murillo

The judgment is affirmed.

Perren, J.

We concur:    Gilbert, P.J.  
                         Coffee, J.

DIVISION SIX (Continued)

B173076      Ventura County Human Services Agency      (Not for Publication)  
v.  
Leilani L., et al.

The judgment is reversed and the matter is remanded to determine whether ICWA applies. If the juvenile court determines, after proper notice and inquiry, that it does not, it shall reinstate the orders and judgment terminating parental rights.

Gilbert, P.J.

We concur:    Yegan, J.  
                     Coffee, J.

B170027      Santa Barbara Co. Flower etc.      (Certified for Publication)  
v.  
County of Santa Barbara

The judgment is affirmed. Costs are awarded to respondent.

Perren, J.

We concur:    Yegan, Acting P.J.  
                     Coffee, J.

B164501      Carolyn Tyler  
v.  
Rochelle Kassens

Filed order modifying opinion. Respondent's petition for rehearing is denied. (Change in judgment)

B169180      George v. City of Morro Bay  
B169264      George v. City of Morro Bay

Filed order consolidating above captioned appeals.

## DIVISION SEVEN

B174835      Lynell W.,      (Not for Publication)  
v.  
Superior Court, Los Angeles County

The petition is granted. The matter is remanded to the juvenile court, which is directed to proceed as follows: The court shall vacate its order of April 19, 2004 terminating reunification and setting a hearing pursuant to section 366.26; set a new six-month review hearing no sooner than 90 days after the date of its new order; order the Department to prepare a supplemental report for the hearing, specifically addressing (among other things) the factors listed in paragraph four of section 366.21, subdivision (3); and order reinstatement of family reunification pending the new six-month hearing.

Zelon, J.

We concur: Perluss, P.J.  
Johnson, J.

[illegible]

For the foregoing reasons, the disposition minute order is amended as follows: The amount of predisposition credit is changed from 40 to 43 days. Probation condition number 15 is modified to read, "Do not associate with anyone known to you to be disapproved by parents or probation officer," and condition number 21 is modified to read, "Do not use or possess narcotics, controlled substances, poisons, or related paraphernalia; stay away from places known to you where users congregate." The juvenile court shall cause its clerk to amend the disposition minute order to reflect these modifications. As modified, the order is affirmed.

Zelon, J.

We concur: Johnson, Acting P.J.  
Woods, J.

## DIVISION SEVEN (Continued)

[illegible]

The judgment is affirmed. The trial court is directed to forward to the Department of Corrections and amended abstract of judgment in which any reference to the imposition of a Penal Code section 1202.4, subdivision (b), restitution fine, or to a Penal Code section 1202.45, parole revocation fine, has been deleted.

Zelon, J.

We concur: Perluss, P.J.  
Woods, J.

B171258 People (Not for Publication)  
v.  
Hernandez

The judgment is affirmed.

Johnson, J.

We concur: Perluss, P.J.  
Woods, J.

B172938      Los Angeles County, D.C.S.      (Not for Publication)  
v.  
Desiree S.,

The judgment is affirmed.

Johnson, J.

We concur: Perluss, P.J.  
Woods, J.

DIVISION SEVEN (Continued)

B175047 Los Angeles County, D.C.S. v. Suzette D.

B176682 Los Angeles County, D.C.S. v. Suzette D.

Filed order consolidating above captioned appeals.

B168985 People

v.

Garcia et al.

Filed order modifying opinion. Petition for rehearing is denied. (No change in the judgment)

B167906 Sterling

v.

Brown et al.

Filed order denying petition for rehearing.

B169808 People

v.

Leos

Filed order denying petition for rehearing.

B164434 Citizens Organized for Smart Transit

v.

Los Angeles Metropolitan Transit Authority

Filed order denying petition for rehearing.

August 17, 2004 (Continued)

DIVISION EIGHT

[illegible]

The order of April 30, 2003, imposing a second \$200 restitution fine is stricken. The clerk of the superior court is directed to prepare an amended abstract of judgment. In all other respects, the judgment is affirmed.

Rubin, J.

We concur: Cooper, P.J.  
Flier, J.